Court No.2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 105 of 2003

Kunwar Singh … **Appellant.**

Versus

Smt. Meena Kumari … **Respondent.**

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 19 of the Family Courts Act, against the order, dated 13.02.2003 and 8-4-2003 passed by Principal Judge, family Court Dehradun, (***in short the Judge***) in Matrimonial Case No. 130 of 2002, arising out of O.S. No. 198 of 2002, Smt. Meena Kumari Vs. Kunwar Singh, filed for grant of interim maintenance under Section 125 of the Code of Criminal Procedure (***in short the Act***), whereby he has allowed the application of the wife-applicant for grant of alimony and directed the O.P.-husband to pay alimony/interim maintenance @ Rs. 2,000/- per month. Vide order dated 8-4-2003, the learned Judge has allowed three months' time to deposit the entire amount of maintenance agreed upon by the parties @ 1,000/-, failing which recovery warrant was ordered to be issued. Aggrieved, the husband-appellant has come up in appeal before this Court on the ground that no opportunity was given to him by the learned Judge to contest the proceedings before passing the impugned order and without considering the objection and affidavit dated 9-6-2002 and the source of income of the O.P.-appellant.

Brief facts of the case are that the wife-respondent has filed application dated 13.9.99 for maintenance under the provisions of Section 125 of the Code of Criminal Procedure in the court below with the allegations that the applicant was married with the opposite

party on 21.2.1992 and since then she was performing her marital obligations amicably. Subsequently, the behaviour of the O.P.-husband and her in-laws became cruel towards her and she was being deprived of the basic need of proper food and clothing. The parents of the applicant tried to pacify the matter but to no avail. Ultimately, the applicant-wife was turned out of the house and she was compelled to live with her parents in the same village. It has been asserted that the applicant-wife has no independent source of livelihood, therefore, the petition under Section 125 of the Act has been filed for maintenance of Rs. 3,000/- per month. During the pendency of the case, application for interim maintenance was moved on 16.5.2000. It appears that the O.P.-husband filed objection on 9.6.2000 against the application for interim maintenance. However, the opposite party has remained absent and has been seeking adjournments time and again. Ultimately, the learned Judge vide order dated 13.2.2003 fixed the interim maintenance at the rate of Rs. 2,000/- per month from 1.7.2001 onwards. It may be noted here that in the impugned order, the learned Judge has observed that the O.P.-husband has been seeking adjournments continuously. Subsequently, on 8-4-2003, the learned Judge passed another order on the basis of agreement between the parties to pay maintenance at the rate of Rs. 1,000/- and 12.5.2003 was fixed in the case. This appeal has been preferred before this Court on 6.5.2003.

We have heard learned counsel for the appellant, Mr. Munish Bhardwaj, and have carefully gone through the entire material on record.

The only argument advanced on behalf of the appellant before us is that the learned Judge has lost sight of the objection and affidavit filed by the appellant on 9-6-2000, while passing the impugned order, therefore, the orders dated 13-2-2003 and 8-4-2003, passed arbitrarily, are liable to be set aside. After having scrutinized the entire record, we find that the submissions of the learned counsel

are baseless and we are not inclined to accept the argument, for the simple reason that it is the appellant himself, who is adopting delay tactics. It may be taken note of the fact that vide order dated 08-4-2003, the Opposite Party-husband has been directed to pay the sum of Rs. 1,000/- ***instead of Rs. 2,000/- (as per earlier order)*** per month towards maintenance allowance, as agreed between both the parties and the three months' time was allowed to the husband to deposit the arrear of interim maintenance. The husband instead of complying with the said order, which has been passed in the light of the agreement between the parties, rushed to this Court to prefer the present appeal. It is pertinent to mention that the provisions of Section 125 of the Act are meant for the protection of the helpless persons, in particular helpless ladies. In the present case, vide order dated 13-2-2003, passed by the learned Judge, the appellant was ordered to pay maintenance at the rate of Rs.2,000/- per month, but subsequently, when the parties came to an agreement and the husband agreed to pay interim maintenance @ Rs. 1,000/- per month, then only the impugned order dated 8-4-2003 became effective. Therfore, it does not lie in the mouth of the husband-appellant to challenge the modified order reducing the amount just to 50% i.e. Rs. 1,000/- instead of Rs. 2,000/-. A husband is under moral obligation to maintain his wife. Here the husband himself has agreed to pay the interim maintenance at the rate of Rs. 1,000/-, but instead of complying with the court's order, he has taken recourse to come up in appeal. This is very strong circumstance, which is fatal to the case of the appellant. On perusal of the entire record, we find that the case was initially filed in the court of Judicial Magistrate Hardwar on 13.9.1999. It remained pending in that court till 8-5-2001. Thereafter the case was transferred to the court of I Additional Civil Judge (Jr.Div.) and the case remained pending in that court upto 10.1.2002. Thereafter, it was transferred to the court of Ist Additional C.J.M. and ultimately from 28.5.2002 onwards, the case has been pending in the Court of Principal Judge, Family Court, Hardwar. We are constrained to observed that the cases relating to maintenance need expeditious disposal, so as to meet the ends of

justice. The attitude of the appellant challenging the impugned order dated 8-4-2003, which has been passed on the basis of the agreement between husband and wife, on the face of it leads to no other inference except that the appellant wants to linger on the proceedings on one pretext or the other, therefore, we find no merit in the appeal, which deserves to be dismissed outright.

Accordingly, the appeal is dismissed. No order as to costs.

28-08-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP

(B.S. Verma,J.) **(P.C.Verma,J.)**

31.08.2004
P.Singh